

E1 - 18545

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To: Surface Transportation Board
Attn: David Navecky
Docket Number: FD-35095
395 E St SW
Washington, D.C. 20423-0001

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Re: Environmental Analysis of Point Mackenzie Alaska Railroad extension---Comments and analysis of three proposed Alaska Railroad routes through the agricultural project especially the undisclosed newly proposed Mac East Variant.

The purpose of this extensive letter is to provide a better analysis and a truthful analysis of the now three competing routes through the Point Mackenzie agricultural project.

Since approximately 1983 I am the owner of Tract 22B in the agricultural project and have been involved in the agricultural project since the State first had a drawing for the agricultural parcels. My wife and I and my children cleared and planted this wilderness farm which took ten years of hard work, and lesser ongoing work since then. I am also an attorney at law, previous Alaska bank manager, and a multiple business creator. My entire tract of 301.85 acres of land is impacted by the new so called Mac East Variant route which was never disclosed until after the public comment period ended in May of 2010. The railroad without disclosure has also relocated the two mile long by one thousand feet wide terminal reserve to the middle of the agricultural project from five miles away without informing the STB or any-one else. This is highly improper, illegal and will result in litigation. Moving a large switching yard terminal reserve five miles is not a Variant. No one even suggested moving one of the two terminal reserves and it is done in a fraudulent manner. Where is it even mentioned in the record? The railroad has gone from public land in two proposed terminal reserves five miles away to taking two thousand acres of private agricultural acres in an agricultural preserve. They will then have fee simple title and commercial land in the middle of an agricultural preserve which they can sell for half a million dollars per acre after they pay us peanuts for it. This five mile shift from public land to private land is significantly distinguishable from the public land terminal reserve actually considered. Substantially similar consequences do not exist. See *Headwaters, Inc. v. BLM* 914 F. 2nd 1174.

No one wishes to go through multiple railroad relocations due to the wrong route being chosen and a large rail yard being relocated without providing comment to those whose property is being taken and the affected agencies. So the first logical item of business is what is the probable future of the Point Mackenzie agricultural project land use? Anchorage is out of developable land. A bridge will be built. The only half decent climate in Alaska stretches along Cook Inlet from Homer past Wasilla. Seventy five

percent of the Alaska population resides in this area. The rest of the State is extremely cold or rainy and people are moving from the villages to Anchorage and the Mat-Su borough daily.

The Point Mackenzie agricultural project is by far the best piece of ground to build anything on in the entire state of Alaska.. It is by far the largest flat piece of ground with buildable soils and a decent climate. The soils are a residential or commercial builders dream. Flat. Topsoil eight to eighteen inches deep. Gravel from there on down. The septic systems work perfectly. Seventy feet and you hit good drinking water for cheap wells. Such land is extremely rare in Alaska. Wetlands we have in abundance, so there is far less need to mitigate as is totally proper in the other states. The farmers will tell you the top soil at Point Mackenzie is not deep enough nor of good quality. It is too small in grain size and has too high of a ph, and contains not enough vegetable matter. The only people disagreeing are the government employees both State and Federal who make a living servicing farmers and who outnumber the total of all Alaska farmers. The better farming soils are in Palmer, Alaska, some forty miles away which is successfully farmed from 1935 to the present. All but five of the original Point Mackenzie agricultural farmers have been foreclosed and most Point/Mac farms have been lost multiple times. These Point Mac farm parcels are destined for residential development and commercial development with out a doubt. The climate is the very best in Alaska. The farms sit the furthest away from mountains, hence virtually no wind unlike Palmer and Anchorage. The farms are close enough to the Cook Inlet Fjord to get the warming effect but far enough to miss the rainfall. This is Shangri-La. Soils and large land to provide the least expensive housing and town of anyplace bar none in Alaska. Far less clouds than Anchorage or Palmer or Wasilla since the Agricultural project sit equal distant from all mountains that bring clouds and wind. This is the Alaska banana belt! As a banker I loaned money to dozens of builders both of residential and commercial properties. This is the land that pays out and gets your house or commercial building loan paid. The State of Alaska Point Mackenzie Agricultural project is 13,940 acres in twenty nine separate parcels. Joe Wilson ably pointed this out in vol. 2 page R-254. One acre residential lots after creating roads would produce eleven thousand wonderful homes with Alaskans living the American dream rather than high rises in Anchorage. No one moved to Alaska to live stacked up on each other except some city planners and architects who oppose everything to justify their jobs. These government workers stand in the way, controlling our lives and reasonable expectations.

The person who suggested the Mac east variant route is my back door neighbor, adjacent landowner Joe Wilson. I bear him no ill will. I bear no ill will toward any of the farmers at Point Mackenzie. All should have equal opportunity to be heard since it appears the danged railroad is going to go thru our beloved Agricultural project. The STB did not require the Alaska Railroad to notify the ten farmers affected by Mr. Wilson's proposed central route and provide for reopening public comment by these ten farmers and any one else who feels these changes will effect them. This was not Mr. Wilson's fault. The road frontage of my property is one and three quarter miles from the Mac East proposed route that others including Mr. Wilson were protesting as is their perfect right.. I and my fellow ten affected farmers had no reason to protest something occurring two miles away.

Furthermore the Railroad is now moving the site of the switching yard-terminal reserve to the middle of the Point Mackenzie agricultural project, a ten fold increase of affected private farm land. The EIS is clearly erroneous in claiming 131 acres of agricultural land affected with Mac East Variant when the taken land amounts to 2000 acres plus it affects the adjacent land with no mitigation measures considered or provided for. None of this was considered by affected agencies much less the affected farmers. This is an illegal bad faith land grab without following the numerous laws involved. A five mile undisclosed terminal reserve shift is not a simple and similar variant. The Mac West terminal reserve area and the Mac East terminal reserve were abandoned with no discussion and the terminal reserve plunked down five miles away, removing a swath of agricultural land two miles long by 1000 feet deep. The undisclosed terminal reserve is to be located on agricultural tract 19, tract 13, and tract 10. See Wilsons map vol 2 R-254. Tract 19 is one half mile from my farm with no buffer trees required to be planted or a dirt berm established along Holstein road to mitigate the train noise and vibration. Under the original Mac East route Holstein Road would have had a safe overpass which is now missing. Safety has been compromised. Deaths will result. Train delay has been increased. There is no car overpass for twenty miles yet any dog team gets as many overpasses as they can claim trails for. This is just plain crazy or in legal terms not reasonable or meeting other standards of review. By the improper process employed, just 30 days have been provided to read six thousand pages in two volumes of an environmental impact statement report and two thousand pages of the Alaska Law of Eminent Domain and the Federal United States Code Annotated on Environmental Impact Statements and state law governing the Alaska Railroad. This letter is just a hint of what may come if a two mile away, tract line "Variant" and a five mile away terminal reserve dropped on us like a Kansas tornado out of the sky is allowed to descend on us without proper procedures and notice and opportunity to be heard.

For the last fifty years many groups have proposed moving the freight terminal of the Anchorage International Airport to the Point Mackenzie Agricultural land, where there is room for both a north south runway and an east west runway. Anchorage has the fifth busiest freight airport in the world. More freight is coming through Asia, including China, headed for the lower forty eight states. Eighty percent of Anchorage Air traffic is freight. The Anchorage Chamber of Commerce and dozens of other agencies have been promoting the flat level ground of the Agricultural parcels for a two directional runway. No input from any of these interested parties has been solicited or obtained. Building a rail line along the Mac East or West route leaves the airport option open. Building the so called Variant route down the middle forecloses an East West runway and could cost billions. This alone should foreclose the Variant route. The misnamed variant route forecloses many land uses that will occur naturally in the next twenty years.

This is not rocket science. Most people do not wish to live within a mile or less of a rail line that is blowing a level road crossing horn. Yet it is a serious proposal that we torture and annoy and endanger people for the next hundred years on two sides of a track by running the track down the middle of lovely land, rather than one far side or the other far side where the noise impact would undeniably be cut in half or less. This seems undeniable. Oh, but Joe Wilson and others on the Mac East route would ably point out

that people on both sides of the Mac East route would be affected just as the people on the central proposed route would be. I agree but it is 4 farmers and not 10. Furthermore, due to the location of an old glacial moraine full of gravel, Holstein Road will get an overpass on the original Mac East route so only two farms are affected since no need to blow a horn where an overpass exists. On the Mac East Variant proposed after closure of comments, there is no overpass so the train horn blows forever into the next century ruining the lives of thousands of future residents. More importantly the Mac East or the Mac West proposal do not get a terminal reserve in the agricultural project, which will provide clanging of 100 car hook ups to all the fine people of Mack East Variant and loss of 2000 more acres. Since the Mack East reserve and the Mac West reserve are outside o the Agricultural project why is only the Mac East Variant saddled with a terminal reserve? This meets the standard of review to get this whole thing thrown out. This is an unexplained discrepancy indicative of fraud, and or arbitrariness and capriciousness, and or bad faith, and or collusion, and or conspiracy, or clear mistakenness or some other appropriate standard of review. The terminal reserve has been relocated on private agricultural land that is significantly distinguishable from the public land alternatives actually considered. There are no substantially similar consequences as the law the STB follows requires. This is the correct standard of review the STB has not followed due to misinformation or no information provided by the railroad and borough.

The Mac West route is the most viable option through the Agricultural lands. It affects the least people since on one side it is a state game reserve and on the other side the farmers road access to their parcels and house locations are a mile away. They inappropriately designed the Mac West route to barely clip three very small corners of land in the state game reserve so section 4 f would defeat it. This borders on conspiracy, stupidity or mistakes that are correctible. If you move over a few feet you miss the game refuge and no false argument is created. The Railroad can move back on to the farm land with no 4f issue and we can all be done with this mess and the future proper and rational development of the ag reserve is preserved for the future to work out appropriately. The only argument against this Mac West solution is that there will be diagonal slices stranding small parts of a couple of farms. This is possibly true but those pieces can be added to the State game preserve or access provided to them as appropriate and they do not amount to any where near the 2000 acres being taken from the farmers on the middle variant. The middle variant messes up all kinds of future appropriate development, jams traffic with 44,000 people living with unguarded noisy crossings and perhaps three times that many people if you provide public water and sewer instead of on site water and sewer as presented. This is clearly coming as there is no room to expand Anchorage. It is coming, bridge or no bridge.

The agricultural covenants have been impermissibly broken numerous times by the State and will not stand up in a court of law. Covenants multiply broken are no longer enforceable. The very order being considered further breaks the covenants giving the Railroad fee simple title to Agricultural land.. Only the Alaska State legislature has power to alter State Agricultural land. Before now, agricultural covenants were broken by adding new restrictions in 1999 that Joe Wilson pointed out. 300 foot reserves burdened the original owners like myself, Joe Wilson, Gerhard Groeschel, Tom

Williams, The Baskins and Craig Tryten who suffered no such easements and relied on the original State authored plan to not create corridors through their lands. It is now being argued, because the State burdened later foreclosed farms with new restrictions the original farmers never suffered and still do not suffer, that this is the logical place to put a terminal reserve and rail line. This is a false argument. The state acted illegally by adding covenants being stretched to the virgin farms without these covenants. Except by virtue of a false argument that since the state acted illegally and later burdened adjacent or nearby farms they now can justify this same transportation corridor on our virgin farms. This is illegal bootstrapping of one illegal act into another. The most telling document in this regard is the States admission in the record at vol.2 R-158 where on may 10, 2010 the State D.N.R. cites the EIS draft 13.1.4.3 and states **“these lands are subject to a perpetual covenant for the benefit of all Alaska residents and running with the land that restricts or limits the use of land for agricultural purposes. No conversion of these lands to non-agricultural use is allowed. The draft EIS does not address this patent restriction or outline the process by which these restrictions could be removed.”** So there you have it .The state breaks the law whenever they feel like it. The STB ignores the state demand to address the covenant issue and the farmer is caught in the middle. Furthermore Alaska law provides that the power of eminent domain does not reside in the Alaska Railroad without the governor’s approval for each separate taking and that power has not been asked for nor obtained. See A.S.42.40.385(d) Other breaking of agricultural covenants by their very enforcers---The State--- are creation of a prison farm long ago on a farm deeded back but not foreclosed owned by Dr Michael James. The original ag covenants provided as many 40 acre parcels as you could get with only 1 house per 40 acres. A farmer could not set up an apartment house on his parcel yet this is what the State prison farm did. The state once again breached the covenant that the state in these very EIS documents argues are covenants benefiting all Alaskans forever. More examples of broken covenants are a communication tower bringing rental income on the Baskin farm. Also, a huge water well is being provided to service the separate new State Goose Bay prison with 1500 inmates with water drawn from a piece of Tom Williams farm possibly depleting and lowering the ag parcels aquifer. Mr. Williams does not own water rights to sell to the new owner and transport water elsewhere. Yet he sells off over forty acres and these folks sell farm covenant water to the prison. But the state wants the new prison so they break all the laws they choose. Furthermore gravel has been extracted from one farm and used on another which breaches the terms of original State covenants. The State when converting an ag parcel to a prison farm with a hundred or more living on it claimed it would house no bad felons such as murders, rapists etc., all of which they have broken. They place unguarded rapists and murders in our midst. The State told us we would have misdemeanor convicts shortly to be paroled in our midst ie. DUI offenders The State legislature should vacate the agricultural covenants to save the costs of litigation. It would cost them nothing. The borough would gain increased tax revenue. Everyone would benefit. The relevance of all this is that the proclaimed use and impacts stated in the final EIS are for the most part wrong.

The State required me to leave a virgin forest around the perimeter of my farm which I did and took multiple measures to replant where missing on Guernsey road. The railroad now seeks to tear down my approximately 100 foot buffer in the back of my farm-east side- and expose me to incredible noise as they blow their horn approaching Holstein Road. The second hundred feet they want to take provides me the only access around the edge of my farm as I have berm rows and windbreaks fifteen in number running perpendicular to the proposed right of way. Once they take my cleared land I will have to remove at great expense 60 to 100 feet of each of 15 windbreaks and berm rows to provide access around my farm and replant the 100 foot noise and sight buffer they destroyed. That buffer will take at least 30 years to become partially effective, as the virgin old growth forest I have now. This will cost far more than what they will offer for the 200 foot right of way but is necessary for the safety and access and ambience of my land. The perimeter on the south side of my farm will have to be widened, since it is one half mile from the new undisclosed terminal reserve which is 1000 feet deep. Loss of condemned land will also reduce my 10 currently enrolled years of conservation reserve payments at forty seven dollars an acre times ten years. Loss of my perimeter also exposes me to trespass and prevents me erecting an electric fence for one half mile without paying for a half mile of fence posts and installation.

Alaska Statute 09.55.430 requires the least private injury in Eminent Domain matters. This State law overrides the EIS and STB pursuant to the constitutional law reserving to the States those matters not specifically given to the federal government. This law requires the railroad to put the rail bed in the public game reserve and not take our private land.

Alaska Statute 42.40.385 controls the Alaska Railroad. Section (d) of this statute states "the exercise of the power or eminent domain requires the prior approval of the governor." This they have not done.

This is the law governing the Alaska Railroad that they have colluded with the Borough to evade and try and avoid and defeat its very purpose. They have the borough condemn the land and then transfer it to the Alaska Railroad thereby illegally defeating the law governing their actions. The EIS requires the railroad to comply with Alaska law.

Alaska Statute A.S. 09.55.240 (g) states the power of eminent domain may only be delegated by statute. There is no law allowing the borough to take private land and give it to the railroad. If there were such a law it would also require the borough to take public land before private land as explained above so the legislature needs to take the edge of the game preserve and declare it no longer game preserve and build the railroad line there.

42 USC 4321 requires the STB to stimulate the health and welfare of man. Allowing at grade crossings where a hundred thousand people will shortly live defeats section 5 requirements to consider the public health and safety and welfare. Section 4332 (2) (E) requires the STB to study develop and describe appropriate alternatives to recommended

courses of action. They have not even considered the numerous studies placing a public international airport at the agricultural project.

A Switching station and terminal reserve on the private agricultural land instead of the public land where the railroad said they would be built five miles away is significantly distinguishable from the alternatives publicly considered. The new undisclosed rail switching terminal reserve yard will not have substantially similar consequences and is therefore illegal. This is an outrageous taking of private land when two sites on public land were the only ones studied and considered for approval. The Alaska statute cited before requires the borough or the railroad to take public land before private land. The EIS requires the applicants to follow the law. I had no reason to present comments on two terminal reserves five miles away on public land. I certainly have lots of comments to make and be considered when in the middle of the night the railroad covets private land one half mile from my property with a long train blocking Holstein Road as they slowly pull into a switching terminal reserve blasting their horn and changing Agricultural land to noisy industrial commercial land and ruining the land for lovely private dwellings. The STB is required to take public testimony on this outrageous private land grab that is not allowed by Alaska law. See A.S.09.55.430 (7) requiring the least private injury and section 460(b) which again requires the least private injury

The only productive use I am currently allowed on my land is to subdivide into forty acre parcels on 302 acres and build a single family dwelling on each such parcel and rent it out to prison guards at the new Goose Creek prison opening next year. This is seven parcels of forty acres each. Agricultural use is a proven money losing operation. The hay crop was disastrous in 2010. The more you work your farm the more indebted you become. This is proven by the state taking back all but five farms and many taken back two and three times and the state misusing the farms for prisons without legislative approval. The legislature must alter the current farm only covenants with one exception for 40 acre private homes, that the railroad is now ruining. This is the realistic future of Point Mackenzie, and the rational solution to this whole mess. The STB can not approve the Mac East Variant since the terminal reserve is now on private not public land five miles away and the route is not preferable to the Mac West route if modified a few feet to not take 3 tiny bits of the game preserve 4f land. Plus all the other reasons and law cited in this comment prevent the Mac East Variant.

Respectfully submitted

Stephen M. Sims